

steps to ensure that each student borrower receives the counseling materials, and participates in and completes the exit counseling.

(4) The institution must maintain documentation substantiating the institution's compliance with this section for each borrower.

(c) *Contact with the borrower during the initial and post deferment grace periods.* (1)(i) For loans with a nine-month initial grace period (NDSLs made before October 1, 1980 and Federal Perkins loans), the institution shall contact the borrower three times within the initial grace period.

(ii) For loans with a six-month initial or post deferment grace period (loans not described in paragraph (b)(1)(i) of this section), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of any grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information:

(A) The total amount remaining outstanding on the loan account, including principal and interest accruing over the remaining life of the loan.

(B) The date and amount of the next required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of any grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month initial grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

(Approved by the Office of Management and Budget under control number 1845-0023)

(Authority: U.S.C. 424, 1087cc, 1087cc-1)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 61411, 61415, Nov. 30, 1994; 64 FR 58312, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002]

§ 674.43 Billing procedures.

(a) The term *billing procedures*, as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use billing procedures that include at least the following steps:

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(3) Notwithstanding paragraph (a)(2)(ii) of this section, if the borrower elects to make payment by means of an electronic transfer of funds from the borrower's bank account, the institution shall send to the borrower an annual statement of account.

(b)(1) An institution shall send a first overdue notice within 15 days after the due date for a payment if the institution has not received—

(i) A payment;

(ii) A request for deferment; or

(iii) A request for postponement or for cancellation.

(2) Subject to § 674.47(a), the institution may assess a late charge for loans made for periods of enrollment beginning on or after January 1, 1986, during the period in which the institution takes any steps described in this section to secure—

(i) Any part of an installment payment not made when due, or

(ii) A request for deferment, cancellation, or postponement of repayment on the loan that contains sufficient information to enable the institution to determine whether the borrower is entitled to the relief requested.

(3) The institution shall determine the amount of the late charge imposed

for loans described in paragraph (b)(2) of this section based on either—

(i) Actual costs incurred for actions required under this section to secure the required payment or information from the borrower; or

(ii) The average cost incurred for similar attempts to secure payments or information from other borrowers.

(4) The institution may not require a borrower to pay late charges imposed under paragraph (b)(3) of this section in an amount, for each late payment or request, exceeding 20 percent of the installment payment most recently due.

(5) The institution—

(i) Shall determine the amount of the late or penalty charge imposed on loans not described in paragraph (b)(2) of this section in accordance with § 674.31(b)(5) (See appendix E); and

(ii) May assess this charge only during the period described in paragraph (b)(2) of this section.

(6) The institution shall notify the borrower of the amount of the charge it has imposed, and whether the institution—

(i) Has added that amount to the principal amount of the loan as of the first day on which the installment was due; or

(ii) Demands payment for that amount in full no later than the due date of the next installment.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice within 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter within 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand

letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in § 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary

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with regard to these deposits and investments.

(Approved by the Office of Management and Budget under control number 1845-0023)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002]

§ 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61412, Nov. 30, 1994]

§ 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts, including litigation as described in § 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with § 674.43(f), the institution shall—

(1) Report the account as being in default to any one national credit bureau; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall—

(i) Litigate in accordance with the procedures in § 674.46;

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional